

CAUSE NO. 17-DCV-242902

[illegible]

CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY): **17-DCV-242902**, COURT (FOR CLERK USE ONLY):

400

STYLED Noris Rogers v. United States Fire Insurance Company

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet: Name: Noris Rogers Email: norisrogers@sbcglobal.net Address: 14506 Berrington Drive City/State/Zip: Houston, Texas 77083-5770 Signature: _____ Telephone: 281.564.0668 Fax: n/a State Bar No: n/a		Names of parties in case: Plaintiff(s)/Petitioner(s): Noris Rogers Defendant(s)/Respondent(s): United States Fire Insurance Company Additional Parties in Child Support Case: _____ Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____ (Attach additional page as necessary to list all parties)		Person or entity completing sheet is: <input type="checkbox"/> Attorney for Plaintiff/Petitioner <input checked="" type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____
2. Indicate case type, or identify the most important issue in the case (select only 1):				
Civil			Family Law	
Contract <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input checked="" type="checkbox"/> Other Debt/Contract: Insurance Action Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____	Injury or Damage <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input type="checkbox"/> Other Injury or Damage: _____	Real Property <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____ Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	Marriage Relationship <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	Post-judgment Actions (non-Title IV-D) <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocals (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____
Employment <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____		Other Civil <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____		
Tax <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax: _____		Probate & Mental Health Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____		
3. Indicate procedure or remedy, if applicable (may select more than 1):				
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment <input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover		
4. Indicate damages sought (do not select if it is a family law case): <input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input checked="" type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input type="checkbox"/> Over \$1,000,000				

17-DCV-242902
 20106/18
 Case Information Sheet
 4630928



17-DCV-242902

PETID

Petition

4850827



DOCKET NO.

17-DCV-242902

NORIS ROGERS,
Plaintiff

v.

UNITED STATES FIRE INSURANCE
COMPANY,
Defendant

§
§
§
§
§
§
§

IN THE COUNTY COURT

AT LAW NUMBER

400

FORT BEND COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION
AND REQUEST FOR DISCLOSURE AND
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Plaintiff, Noris Rogers (appearing *pro se*) brings the following action against Defendant, United States Fire Insurance Company and would show the Court the following:

DISCOVERY CONTROL PLAN

1. Plaintiff intends to conduct discovery in this case under Texas Rule of Civil Procedure ("TRCP") 190.2 (Level 1) and affirmatively pleads that this lawsuit is governed by the expedited-actions process pursuant to TRCP Rule 169.

CLAIMS FOR RELIEF

2. As required and pursuant to TRCP Rule 47(c)(1), Plaintiff affirmatively pleads that the damages sought are within the jurisdictional limits of this court; and he seeks only monetary relief of \$100,000 or less, including damages of any kind, penalties, costs, expenses, and pre-judgment interest.

PARTIES

3. Plaintiff, Noris Rogers, appearing *pro se*, is a United States citizen and Texas resident who reside at 14506 Berrington Drive, Houston, Fort Bend County, Texas

77083-5770, and whose Texas driver license number is 07028179. Plaintiff is a specified third-party beneficiary.

4. Defendant, United States Fire Insurance Company is a “foreign” fire and casualty insurance company pursuant to *Section 804.103* of the Texas Insurance Code. Defendant’s last known physical address is 305 Madison Avenue, Morristown, New Jersey 07960-6117. Its Texas Department of Insurance Identification Number is 95866 and Federal Employee Identification number is 135459190.

Defendant may be served with process of service by serving its registered agent for service: Mike Hicks, Regional Claims Manager at 2400 Lakeside Boulevard, Suite 200, Richardson, Texas 75082-4341.

JURISDICTION AND VENUE

5. This court has jurisdiction in this matter since at all times relevant, Plaintiff has been a permanent resident of Fort Bend County and this is the county where the policy holder resided at the time this cause of action accrued.

6. Venue for this suit is permissive in Fort Bend County under Texas Civil Practices and Remedies Code section 15.002 since all of the events and omissions giving rise to Plaintiff’s claims of liability occurred therein.

CONDITIONS PRECEDENT

7. At all times relevant, a valid contract of insurance existed at the time the charges for medical costs were incurred and all such medical costs were reasonable and necessary to treat the injury Plaintiff sustained on November 8, 2015: *See*, (Attachment A) (notice of acceptance of claim). All conditions precedent to the Defendant’s liability under the supplemental accident insurance contract/policy has occurred or has been performed.

STATEMENT OF THE CASE

8. The Defendant issued a Commercial Supplemental Accident Policy of Insurance to Safety America, Inc., (“Safety America”) under policy number, US463496.¹ On or about January 25, 2016, the Plaintiff, Noris Rogers (“Rogers”, “I” of other personal pronoun) became a third-party beneficiary under the terms of the insurance policy: (*Id*).²

9. In the early afternoon on Sunday, November 8, 2015, Plaintiff was engaged in a karate sparring session at the Cordes training facility when he sustained a fracture to his left knee from a kick by a sparring partner.³ On that same day, Plaintiff was driven to St. Michael’s Emergency Room, an out-patient emergency medical treatment facility by Bob Ryan.⁴ On or about January 8, 2016, Plaintiff was seen by Doctor Steven E. Nolan at Fondren Orthopedic Group L.L.P. for the first time as a *cash pay* patient. Doctor Nolan straightaway ordered an MRI. The MRI revealed a “comminuted fracture of the lateral tibial plateau”. It was at this time that Plaintiff first learned that he had sustained a fracture to his left knee.⁵

10. On or about February 5, 2016, Defendant began directly accepting and paying claims from Plaintiff’s medical providers. On March 5, 2016, Doctor Nolan recommended that Plaintiff began physical therapy. Plaintiff started physical therapy on

¹ Safety America is a renowned martial arts school with its main training facility located at 2595 Cordes Drive, Sugar Land, Texas 77479. The business is owned by Robert Gifford, a seventh-degree black belt martial artist.

² The coverage was made retroactive back to November 8, 2015, the date of the injury.

³ Plaintiff is a former martial artist who received his first-degree black belt from Safety America in April of 2005. At all times relevant, Plaintiff was a full member in good standing at Safety America, Inc.

⁴ Bob Ryan is a fifth-degree black belt, head instructor at Safety America. The x-rays taken at the emergency facility, later proved to be inconclusive.

⁵ Plaintiff does not have private medical insurance; neither does he receive benefits from Medicare or Medicaid.

his left knee at Premier Performance Physical Therapy of Oak-Bend Medical Center on March 8, 2016.

11. On or about June 15, 2016, Plaintiff also began seeing Doctor Benoy Benny, M.D. (a Physical Medicine and Rehabilitation Specialist) at The Spine and Sports Center for pain in his low-back. Doctor Benny determined that Plaintiff's low-back pain was related to the original knee injury; and on or about June 21, 2016, in conjunction with the physical therapy for the knee, Plaintiff also started physical therapy at Premier Performance Physical Therapy of Oak-Bend Medical Center for his low-back pains.

12. Premier Performance Physical Therapy of Oak-Bend Medical Center is a duly qualified health care provider and all of the physical therapy services it provided to Plaintiff between March and October of 2016; were reasonable and necessary.

13. However, in a letter dated September 29, 2016, the Defendant notified Plaintiff that (*as related to the knee injury*) it would *no longer* be covering charges for services after May 31, 2016. The letter also stated (*as related to the low-back*) that the Defendant would not approve or pay for *any* of the treatments received by Plaintiff. The Defendant had apparently withheld all payments on claims from Premier Performance after May 31, 2016 for the medical care it had provided to the Plaintiff.

14. Plaintiff appealed, and then in a second letter, dated November 15, 2016, the Defendant *partially* reversed its decision. Defendant agreed to pay for ("an additional 12 therapy visits", as related to the low-back), but held fast to its decision not to pay for anymore therapy visits after May 31, 2016, as related to the original knee injury.

15. In all, as related to the knee, Plaintiff received physical therapy treatments about three times a week from March 8, 2016 through October 7, 2016; and as related to the low-back, about twice a week, from about June 21, 2016 through August 23, 2016.

16. Pursuant to the terms of the insurance contract, the policy has e.g., a \$100,000.00 maximum benefit per injury, and a benefit period of 12 months. Neither of these limits was exceeded or had expired: (*See*, Attachment 1).

17. On or about June 26, 2016, Plaintiff received a "Notice of Award" (after filing a claim for disability) from Social Security Administration Retirement, Survivors and Disability Insurance ("SSA"). The SSA found that Plaintiff had become disabled under its rules on "November 15, 2016". Plaintiff became entitled to monthly disability benefits beginning in May of 2016.⁶

NO FEDERAL CLAIMS ARE ASSERTED IN THIS LAWSUIT

18. Plaintiff does not assert any federal claims in this proceeding. Plaintiff's claims herein are based solely on Defendant's delay and refusal to pay medical expenses for bodily injury caused by an accident which occurred on the insured's premises pursuant to the terms of the commercial general liability insurance policy and requirements of the Texas Insurance Code.

CAUSES OF ACTION

COUNT NO. 1 – BENEFITS PAYABLE TO PLAINTIFF

19. As of the date of this filing, Plaintiff has still not reached full or maximum recovery from the original injury to his left knee, or from his low-back related problems.

⁶ Plaintiff is 64-years old and is licensed by the state of Texas as a Master Electrician and Electrical Contractor, and had been self-employed in that capacity since 1994.

20. Past due benefits are due to the Plaintiff under the terms of the insurance contract/policy in the amount of \$10,802.80, which represents the amount of medical costs the Defendant denied.

21. Benefits for future medical costs are due to the Plaintiff under the terms of the insurance contract/policy in an amount up to \$77,670.00.

**COUNT NO. 2 – VIOLATIONS OF THE TEXAS INSURANCE CODE
SECTIONS 542, 4201 ET SEQ AND BAD-FAITH LIABILITY**

22. The Plaintiff is also entitled to recover statutory penalties of 18 percent per year of the amount payable under the policy, because at least six months has elapsed since the claims were presented for payment, and the Defendant has not paid the Plaintiff's claims, even though it is liable to pay the claims under the terms of the insurance contract.

23. Both the Defendant and the insured (Safety America) has refused to cooperate in furnishing the Plaintiff with complete information regarding benefits available to him under Safety America's insurance contract. Defendant did not adhere to reasonable standards in conducting its utilization review.

24. Defendant pre-approved all sessions of physical therapy, then after several months of delays later denied the claims for payment for those same pre-approved sessions of treatment.

COUNT NO. 3 – BREACH OF CONTRACT

25. The Plaintiff has standing to enforce the contract executed by Defendant and the insured because Plaintiff is a third-party beneficiary of the insurance contract.

26. The Plaintiff has fully performed his contractual obligations under the terms of the insurance contract.

27. Defendant breached the contract because it has refused to fulfill its obligation pursuant to the insurance contract. Defendant did not adhere to reasonable standards in conducting its utilization review.

28. Upon information and belief, the Defendant pre-approved all sessions of physical therapy, then after several months of delays, later denied payment of claims for those same pre-approved sessions of treatment.

DEMAND FOR JURY TRIAL

29. Plaintiff hereby makes his request for a trial by jury in this cause pursuant to Rule 216 of the Texas Rules of Civil Procedure.

DAMAGES

30. Defendant is liable; as a direct and proximate result of its decision to not approve and pay for all medically necessary services received by Plaintiff. Defendant has harmed Plaintiff due to the disparity of bargaining power inherent in the insurer and insured relationship and because of the exclusive control exercised by the Defendant in the processing of Plaintiff's claims.

31. Defendant's conduct of denying payments to service providers (on Plaintiff's behalf) for medically necessary services has caused and continues to cause Plaintiff substantial harm.

RELIEF REQUESTED

The Plaintiff request that the Defendant is cited to appear and answer herein, and then upon final hearing, Plaintiff be awarded judgment as follows:

1. Actual damages;
2. Past and future medical expenses;

3. Past and future pain and suffering;
4. Past and future mental anguish;
5. Exemplary damages;
6. Prejudgment and post judgment interest;
7. Court costs;
8. Attorney fees, if applicable;
9. Such other and further relief, at law or in equity to which Plaintiff has shown himself justly entitled.

PLAINTIFF'S REQUEST FOR DISCLOSURE

Under authority of Texas Rule of Civil Procedure 194, Plaintiff requests that the Defendant disclose, within 50 days of service of this request, the information and/of material requested in Texas Rule of Civil Procedure 194.2(a)-(l).

PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

1. Please produce a complete copy of the Commercial General Liability/Accident/Supplemental Accident Policy Defendant issued to "Robert Gifford" (owner) "Safety America, Inc." under Policy No. US463496, which make the basis of this lawsuit.
2. Please produce a complete copy of the "notification of injury form"/claim form filed by Robert Gifford, on Plaintiff's behalf under Group No. FLDUSF415, which make the basis of this lawsuit.

Respectfully submitted,



Noris Rogers
14506 Berrington Drive
Houston, Texas 77083-5770
Landline: 281-564-0668
Email: norisrogers@sbcglobal.net

FILED

2017 JUN 27 AM 10: 27


CLERK DISTRICT COURT
FORT BEND CO., TX



P.O. BOX 14162
READING, PA 19612-4162

PHONE: 866-915-6618
FAX: 610-370-6767

www.loomisco.com
suppacc@loomisco.com

January 25, 2016

RECEIVED
1.29.2016

Noris Rogers
14506 Berrington Dr
Houston, TX 77083

Group# FLDUSF415
Claimant: Noris Rogers

To Whom It May Concern:

We received a notification of injury form for the above claimant regarding an injury that occurred on 11/8/2015. We have opened an account for this injury under policy number US463496. This is a supplemental accident policy that contains limited benefits. The items checked below apply to the coverage provided under this policy.

- ☒ This policy has a \$1,000.00 deductible.
- ☒ This policy has a \$100,000.00 benefit maximum per injury.
- ☒ This policy has a benefit period of 12 months.
- ☒ This policy is a Full Excess policy. We would be secondary to most other insurance.
- ☒ This policy requires the First Covered Expense to be incurred within 90 days of the injury.
- ☒ This policy is a Primary policy.
- ☒ This policy has specific benefit limits on most services. Please review benefits with the policyholder or contact us for benefit details.
- ☒ This policy does not cover most medical supplies and equipment.
- ☒ Durable Medical Equipment rentals require pre-approval.
- ☒ Purchases are not covered

In order to review charges related to the injury, we will need the providers to submit itemized bills in CMS 1500, UB04, or ADA format. If you have not done so already, please contact your providers and let them know you have supplemental accident insurance and that they should be submitting their claims directly to our office. If you have already paid the provider and/or they will not bill us directly, ask them to provide you with an itemized bill that includes their name, address, tax identification number, procedure or revenue codes, and diagnosis codes. We will not pay benefits from receipts only; however, proof of payment is required to reimburse the claimant directly.

If this is a Full Excess policy and you have primary insurance, we will also require copies of the explanation of benefits from

ATTACHMENT A

INSURANCE AND ADMINISTRATIVE SERVICES
WYOMISSING PA • ANNAPOLIS MD • FORT LAUDERDALE FL • LAS VEGAS NV • PORTLAND OR • TOMS RIVER NJ



P.O. BOX 14162
READING, PA 19612-4162

PHONE: 866-915-6618
FAX: 610-370-6767

www.loomisco.com
suppacc@loomisco.com

your primary insurance carrier for each charge submitted. If you have been treated by a dentist, endodontist, etc., the charges will have to be submitted to your primary medical

insurance carrier for review. Most major carriers cover injuries to the mouth under the medical benefits. If they do not, we will need a denial notice from the carrier.

Thank you for your submission. If you have any questions regarding the information contained in this letter, or your claim in general, please contact us at 866-915-6618 or at suppacc@loomisco.com. Submit all claims to The Loomis Company, PO Box 14162, Reading, PA 19612.

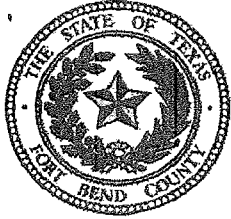
This letter is not a guarantee of benefits. All benefits are subject to the claimant's eligibility, policy provisions, and medical necessity at the time of service.

Sincerely,

Claims Department
The Loomis Company

LOOMIS
THE LOOMIS COMPANY
850 N. PARK ROAD
P.O. BOX 7011
WYOMISSING, PA 19610-6011

CARRIER: UNITED STATES FIRE ACCIDENT HEALTH



ANNIE REBECCA ELLIOTT
Fort Bend County District Clerk
301 Jackson, Richmond, TX 77469

17-DCV-242902

REQU

Request

4850835



Telephone: (281) 341-4509

Fax: (281) 341-4519

REQUEST FOR PROCESSAll sections must be completed for processing this request.

Section 1:

Cause No. 17-DCV-242902

Style:

Date JUNE 27, 2017

400

NORIS ROGERS

VS

UNITED STATES FIRE INSURANCE COMPANY

Section 2:

Check Process Type:☒ Citation ☐ Precept to Serve / Notice of Hearing ☐ Temporary Restraining Order☐ Application for Protective Order / Temporary (Ex Parte) Protective Order☐ Notice of Registration of Foreign Judgment ☐ Citation by Posting☐ Writ of ☐ Other☐ Citation by Publication* - Newspaper:* (All publications are sent to: Fort Bend Herald 1902 South Fourth Street, Rosenberg TX 77471)* (Unless another newspaper is specified - FBC Constable will only serve within their jurisdiction.)**APPLICATION FOR ISSUANCE OF SUBPOENA MUST BE SUBMITTED ON A SEPARATE FORM**

Section 3:

Title of Document/Pleading to be attached for service:

PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE AND
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**Note: You must furnish one copy of the document/pleading for each party served.**Section 4: **PARTIES TO BE SERVED** (Please type or print):1. Name: MIKE HICKS, REGIONAL CLAIMS MANAGERAddress: 2400 LAKESIDE BOULEVARD, SUITE 200City: RICHARDSONState: TEXASZip: 75082-4341

2. Name:

Address:

City:

State:

Zip:

3. Name: _____

Address: _____

City: _____ State: _____ Zip: _____

4. Name: _____

Address: _____

City: _____ State: _____ Zip: _____

5. Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Section 5**Check Service Type:**☐ No Service☐ Secretary of State☐ Sheriff☐ Commissioner of Insurance☐ Constable Pct. _____☒ Out of County☐ Out of State☐ Private ProcessNR ☒ ~~Certified Mail~~☐ Registered Mail (Out of Country)**Section 6 (ONLY if Section 7 does not apply)****Attorney Name:** _____

Address: _____

Street/P.O. Box

City

State

Zip

Attorney's Telephone No. _____ Attorney's Bar No. _____

Section 7 (ONLY if Section 6 does not apply)**Pro-Se Name:** NORIS ROGERSAddress: 14506 BERRINGTON DANE

Street/P.O. Box

HOUSTON

City

TEXAS

State

77083-5770

Zip

Telephone No. 281.564.0668**Section 8****Check Delivery Type:**☒ Hold for pick up☐ Mail to Attorney☐ Mail to Pro-Se Party

**SERVICE FEE NOT COLLECTED
BY DISTRICT CLERK**

THE STATE OF TEXAS

CITATION

**TO: UNITED STATES FIRE INSURANCE COMPANY
C/O MIKE HICKS REGIONAL CLAIMS MANAGER
2400 LAKESIDE BOULEVARD SUITE 200
RICHARDSON TX 75082-4341**

NOTICE:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on Monday next following the expiration of twenty days after you were served this citation and **PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS** filed on June 27, 2017, a default judgment may be taken against you.

The case is presently pending before the **400TH JUDICIAL DISTRICT COURT** of Fort Bend County sitting in Richmond, Texas. It bears cause number **17-DCV-242902** and is styled:

NORIS ROGERS V. UNITED STATES FIRE INSURANCE COMPANY

The name and address of the attorney for **PLAINTIFF** is:

**NORIS ROGERS
14506 BERRINGTON DRIVE
HOUSTON TX 77083**

The nature of the demands of said **PLAINTIFF** is shown by a true and correct copy of the **PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS** accompanying this citation and made a part hereof.

If this Citation is not served, it shall be returned unserved. Issued under my hand and seal of said Court, at Richmond, Texas, on this the 27th day of June, 2017.

**ANNIE REBECCA ELLIOTT, DISTRICT CLERK
FORT BEND COUNTY, TEXAS**

Physical Address:

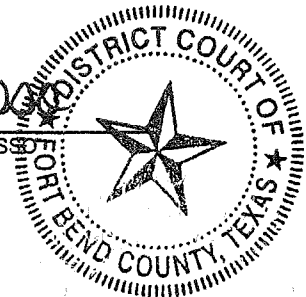
1422 Eugene Heimann Circle, Room 10142
Richmond, Texas 77469

Mailing Address:

301 Jackson Street
Richmond, Texas 77469

By: _____

Deputy District Clerk SALENA M JASSTON
Telephone: (281) 341-3787



17-DCV-242902
ISSU
Issuance
4851782



FILE

Exhibit 2



ANNIE REBECCA ELLIOTT
DISTRICT CLERK
Fort Bend County, Texas

June 27, 2017

17-DCV-242902
NORIS ROGERS V. UNITED STATES FIRE INSURANCE COMPANY

NOTICE

The attachments to this notice are intended for **NORIS ROGERS 281-564-0668**. If you have received them in error, please return to the District Clerk's Office.

Do not take papers that are not intended for you.

Thank you.

ANNIE REBECCA ELLIOTT
District Clerk

17-DCV-242902
LETT
Letters
4851792



Physical Address
1422 Eugene Heimann Circle, Room 10142
Richmond, Texas 77469

<http://www.fortbendcountytexas.gov>
Phone: (281) 341-4509
Fax: (281) 341-4519

Mailing Address
301 Jackson, Room 101
Richmond, Texas 77469

FILE

Exhibit 2

SERVICE FEE NOT COLLECTED
BY DISTRICT CLERK

THE STATE OF TEXAS

CITATION

TO: UNITED STATES FIRE INSURANCE COMPANY
C/O MIKE HICKS REGIONAL CLAIMS MANAGER
2400 LAKESIDE BOULEVARD SUITE 200
RICHARDSON TX 75082-4341

NOTICE:

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NORIS ROGERS
14506 BERRINGTON DRIVE
HOUSTON TX 77083

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If this Citation is not served, it shall be returned unserved. Issued under my hand and seal of said Court, at Richmond, Texas, on this the 27th day of June, 2017.

ANNIE REBECCA ELLIOTT, DISTRICT CLERK
FORT BEND COUNTY, TEXAS

Physical Address:

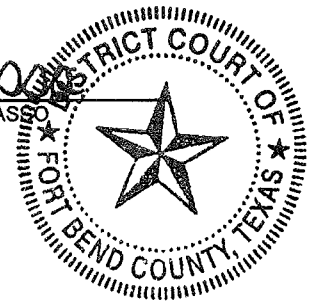
1422 Eugene Heimann Circle, Room 10142
Richmond, Texas 77469

Mailing Address:

301 Jackson Street
Richmond, Texas 77469

By: *Salena Jasso*

Deputy District Clerk SALENA M JASSO
Telephone: (281) 341-3787



17-DCV-242902

OFRE
Officers Return
4882548



6
FILED

2017 JUL 18 AM 11:46

Annie Rebecca Elliott

CLERK DISTRICT COURT
FORT BEND CO., TX

ORIGINAL

Exhibit 2

17-DCV-242902

400th Judicial District Court

Noris Rogers V. United States Fire Insurance Company

OFFICER'S OR AUTHORIZED PERSON'S RETURN

Came to hand on the _____ day of _____, 20____, at _____ o'clock ____M.

Executed at _____, within the County of _____

_____, at _____ o'clock ____M* on the _____ day of _____

_____, 20____, by delivering to the within named _____

_____, in person, a true copy of this citation together

with the accompanying copy of the petition, having first attached such copy of such petition to such copy

of citation and endorsed on such copy of citation the date of delivery.

Total fee for serving _____ citation at \$80.00 each \$_____

Name of Officer or Authorized Person_____
County, TexasBy: _____
Signature of Deputy or Authorized Person

*State day and hour and place of serving each person.

COMPLETE IF YOU ARE A PERSON OTHER THAN A SHERIFF, CONSTABLE, OR CLERK OF THE COURT.

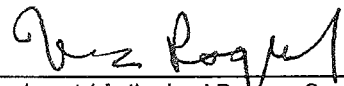
In accordance with Rule 107: The officer or authorized person who serves, or attempts to serve, a citation shall sign the return. The signature is not required to be verified. If the return is signed by a person other than a sheriff, constable, or the clerk of the court, the return shall be signed under penalty of perjury and contain the following statement:

"My name is NORIS ROGERS, the PLAINTIFF

(First, Middle, Last)

my date of birth is 8.19.1952, and my address is 14506 BERRINGTON DRIVE
(Street, City, Zip)HOUSTON, TEXAS 77083-5710."

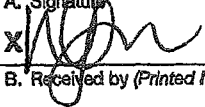
I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed in FORT BEND County, State of TEXAS, on the
day of JULY 17, 2017.
Declarant / Authorized Process Server_____
(Id # & expiration of certification)

ORIGINAL

Citation (Original Petition) issued to United States Fire Insurance Company on 6/27/2017

Exhibit 2

SENDER COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature </p> <p><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>Mike Hicks, Regional Claims Manager United States Fire Insurance Company 2400 Lakeside Boulevard, Suite 200 Richardson, Texas 75082-4341.</p>		<p>B. Received by (Printed Name)</p> <p>C. Date of Delivery 7/9</p>	
<p>2. Article Addressed to:</p> <p>Mike Hicks, Regional Claims Manager United States Fire Insurance Company 2400 Lakeside Boulevard, Suite 200 Richardson, Texas 75082-4341.</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Restricted Delivery</p>		<p><input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>	
<p>9590 9402 2236 6193 0111 63</p> <p>7015 0640 0003 0770 6127</p>		<p>PS Form 3811, July 2015 PSN 7530-02-000-9053</p>	

Domestic Return Receipt

U.S. Postal Service
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

RICHARDSON TX 75082

7015 0640 0003 0770 6127

Certified Mail Fee	\$3.35	0028
Extra Services & Fees (check box, add fee as appropriate)	\$2.75	25
<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00	
<input type="checkbox"/> Return Receipt (electronic)	\$0.00	
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00	
<input type="checkbox"/> Adult Signature Required	\$0.00	
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00	
Postage	\$1.40	
Total Postage and Fees	\$5.50	
<p>Postmark Here</p> <p>06/30/2017</p>		
<p>Sen Mike Hicks, Regional Claims Manager</p> <p>Str United States Fire Insurance Company</p> <p>2400 Lakeside Boulevard, Suite 200</p> <p>City Richardson, Texas 75082-4341.</p>		
<p>PS Form 3800, April 2015 PSN 7530-02-000-9053 See Reverse for Instructions</p>		

Filed
7/28/2017 1:38 PM
Annie Rebecca Elliott
District Clerk
Fort Bend County, Texas
Ashley Alaniz

CAUSE NO. 17-DCV-242902

NORIS ROGERS	§	IN THE DISTRICT COURT OF
<i>Plaintiff</i>	§	
	§	
	§	
	§	
	§	FORT BEND COUNTY, TEXAS
	§	
UNITED STATES FIRE INSURANCE	§	
COMPANY	§	
<i>Defendant</i>	§	400TH JUDICIAL DISTRICT

**DEFENDANT UNITED STATES FIRE INSURANCE COMPANY'S
ANSWER TO PLAINTIFF'S ORIGINAL PETITION**

Defendant United States Fire Insurance Company ("U.S. Fire") files this Answer in response to Plaintiff Noris Rogers' ("Plaintiff") Original Petition, and shows the Court as follows:

GENERAL DENIAL

1. Pursuant to Rule 92 of the Texas Rules of Civil Procedure, U.S. Fire generally denies all of the allegations contained in Plaintiff's Original Petition, and demands strict proof of each allegation by a preponderance of the credible evidence in accordance with the Constitution and the laws of the State of Texas.

U.S. FIRE'S ADDITIONAL DEFENSES

2. Plaintiff has failed to state a claim upon which relief can be granted.
3. U.S. Fire asserts all terms, conditions, provisions, limitations, requirements, and exclusions of the Accident Only Policy issued by U.S. Fire to Safety America, Inc. ("Safety America") identified as Policy No. US463496 (the "Policy") with a policy period of August 2, 2015 to August 2, 2016 and a maximum benefit amount of \$100,000. To the extent that Plaintiff's claim does not comply with such terms, conditions, provisions, limitations,

requirements, and exclusions, there is no coverage for the claim. To the extent that the Policy provides additional rights, remedies, or options available to U.S. Fire that are not pled in this answer, U.S. Fire does not waive their rights to invoke such provisions either contractually or by further pleading.

4. Plaintiff's claims are barred by estoppel or waiver.

5. Plaintiff's damages, if any, were caused, in whole or in part, by Plaintiff's negligence or voluntary acts in, among other things, failing to comply with Policy requirements, seeking coverage for uncovered damages or in amounts not supported by the Policy or facts, and filing suit without meeting conditions precedent to coverage. Therefore, U.S. Fire's liability, if any, is prescribed under the provisions of §33.001 of the Texas Civil Practices & Remedies Code. To the extent any of these actions were caused by a third party, such third party's acts were an intervening or superseding cause of the damages destroying the causal connection to any acts of U.S. Fire. Moreover, to the extent such third party's actions are not directly chargeable to Plaintiff, such third parties have therefore become responsible third parties whose actions should be submitted to the finder of fact for determination of causation or responsibility.

6. To the extent any damages asserted were caused by the failure of Plaintiff to mitigate its damages either under policy requirements or common law requirements, U.S. Fire pleads the defense of failure to mitigate damages.

7. To the extent there is "other insurance" covering the claim at issue, the obligations of U.S. Fire are reduced or altered in accordance with the provisions in the Policy concerning other insurance.

8. Plaintiff has not suffered any damages that are recoverable under any extra-contractual theory of liability.

9. Plaintiff cannot recover under Texas Insurance Code Chapter 541 or 542 because U.S. Fire has complied with all requirements therein.

10. Defendants invoke all rights of contribution or proportionate responsibility (including rights regarding settlement credits or offsets) that may be available under Texas law or Chapters 32 and 33 of the Texas Civil Practice and Remedies Code.

11. By the filing of this Answer, U.S. Fire does not waive any defenses available to them and may assert these defenses at a later time.

12. Plaintiff seeks \$10,802.80 in additional medical expenses, and alleges that he is due \$77,670 in future medical costs. The Policy includes the following language with respect to limitations of benefits payable:

LIMITATIONS

Any benefits payable under this Policy will be limited to the following:

(2) Costs that exceed the Usual, Reasonable and Customary charges in the area where the services are furnished or supplies provided. Services, supplies and equipment must be:

- a) Medically necessary for the care or treatment of a covered Injury;
- b) Received while coverage is in force under this Policy; and
- c) Rendered and/or prescribed by a licensed Doctor other than the Covered Person (or a member of his household or immediate family) in accordance with current medical standards and practices.

The Policy includes the following relevant definitions:

DEFINITIONS

“Medically Necessary” or “Medical Necessity” means the service or supply is:

- (1) Prescribed by a Doctor for the treatment of the Injury; and

- (2) Appropriate, according to conventional medical practice for the Injury in the locality in which the service or supply is given.

“Usual, Reasonable and Customary” means:

- (1) With respect to fees or charges, fees for medical services or supplies which are;
- (a) Usually charged by the provider for the service or supply given; and
- (b) The average charged for the service or supply in the locality in which the service or supply is received; or
- (2) With respect to treatment or medical services, treatment which is reasonable in relationship to the service or supply given and the severity of the condition.

Plaintiff alleges that he was injured while sparring at Safety America, a martial arts school. Loomis, the third-party administrator for U.S. Fire, has paid, as of the date of this Answer, \$32,571.60 for medically necessary benefits for the treatment of Plaintiff’s left knee and lower back. After continuous treatment, an independent peer review indicated that Plaintiff did not need further physical therapy. U.S. Fire does not owe Plaintiff any further benefits under the Policy because his treatment is no longer medically necessary.

Based upon the foregoing, Defendant United States Fire Insurance Company prays that Plaintiff’s Original Petition be dismissed, and for such other and further relief to which it may be justly entitled.

Respectfully submitted,

**THOMPSON, COE, COUSINS & IRONS,
L.L.P.**

By: /s/ Christina A. Culver
Brian S. Martin
Texas State Bar No. 13055350
Christina A. Culver
Texas State Bar No. 24078388

One Riverway, Suite 1400
Houston, Texas 77056
Telephone: (713) 403-8210
Facsimile: (713) 403-8299
Email: bmartin@thompsoncoe.com
Email: cculver@thompsoncoe.com

**COUNSEL FOR DEFENDANT UNITED
STATES FIRE INSURANCE COMPANY**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this, the 28 day of July, 2017, a true and correct copy of the foregoing document was duly served on all known counsel of record via electronic transmission, pursuant to Texas Rules of Civil Procedure and applicable Local Rules, as follows:

Noris Rogers
14506 Berrington Drive
Houston, Texas 77083
Via Certified Mail and
Via Email: norisrogers@sbcglobal.net

/s/ Christina A. Culver
CHRISTINA A. CULVER

I, Annie Rebecca Elliott, District Clerk of Fort Bend County, Texas, do hereby certify that the foregoing is a true, correct and full copy of the instrument herein set out as appears of record in the District Court of Fort Bend County, Texas.
This 1 day of August, 2017
ANIE REBECCA ELLIOTT DISTRICT CLERK
By *[Signature]* Deputy
Senobio "Sonny" Garcia